

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
at CHARLESTON**

**AMERICAN FEDERATION OF TEACHERS-
WEST VIRGINIA, *et al.*,**

Plaintiffs,

and

**WEST VIRGINIA EDUCATION ASSOCIATION,
et al.,**

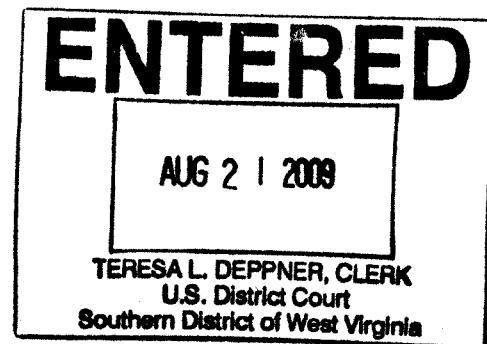
Plaintiffs,

Civil Action No.: 2:08-1406

v.

**KANAWHA COUNTY BOARD OF
EDUCATION, *et al.*,**

Defendants.



CONSENT DECREE

The West Virginia Education Association (WVEA) and American Federation of Teachers, West Virginia (AFT-WV), among other plaintiffs, filed a civil action challenging the legality of a Kanawha County Board of Education (KCBOE) policy—scheduled for implementation effective January 1, 2009—that required the random, suspicionless drug testing of teachers and non-teacher school employees in 45 specified job classifications (hereinafter “revised Employee Drug Use Prevention Policy”). *See Am. Fed’n of Teachers v. Kanawha County Bd. of Educ.*, 592 F. Supp. 2d 883, 886-87 (S.D.W.V. 2009). In December 2008, this Court granted Plaintiffs’ motion to preliminarily enjoin the revised Employee Drug Use Prevention Policy; it issued a written Order explaining its reasoning on January 8, 2009. *Id.* at 883-906.

This Consent Decree is intended to establish and memorialize the parties' agreement with respect to all of the claims asserted in this case. After reviewing the terms of this Consent Decree, the Court concludes that the entry of this Decree comports with the U.S. Constitution and applicable state law.

AGREEMENT

It is hereby agreed by the parties and ordered by this Court as follows:

1. This Court's preliminary injunction is converted to a permanent injunction.
Defendants are permanently enjoined from enforcing the random drug testing provisions of the revised Employee Drug Use Prevention Policy promulgated by the Kanawha County Board of Education on October 15, 2008, except to the extent that, if the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit were to rule that such drug-testing provisions are constitutional, Defendants may move this Court to dissolve or amend this Decree, consistent with such ruling.
2. This Consent Decree does not purport to remedy any potential violations of the United States Constitution or the laws of the State of West Virginia, beyond those alleged in the complaint filed in this matter.
3. The parties will attempt to resolve among themselves any and all issues concerning the Plaintiffs' attorneys' fees and costs associated with this matter. If they are unable to reach a settlement, Plaintiffs will file a motion for attorneys' fees and costs within 60 days from the Court's signing this Decree. This Court

hereby extends otherwise applicable deadlines for the filing of such a motion, and it retains jurisdiction for purposes of resolving a fees and costs dispute, if any.

4. This Consent Decree constitutes the entire agreement between the parties relating to this civil action, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this Decree, shall be enforceable.

WHEREFORE, this Consent Decree is hereby entered as the JUDGMENT of this Court.

SO ORDERED this 91 day of August, 2009.


THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

**Plaintiffs AMERICAN FEDERATION
OF TEACHERS-WEST VIRGINIA and
WEST VIRGINIA EDUCATION
ASSOCIATION *ET AL.***

and

**Defendants KANAWHA COUNTY
BOARD OF EDUCATION, INC. *ET AL.***

By counsel:

/s/ Carolyn A. Wade
Jan L. Fox, Esq. (SBID #1259)
Carolyn A. Wade, Esq. (SBID #3886)
Steptoe & Johnson PLLC
Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588

E-mail: jan.fox@steptoe-johnson.com

For Defendants

/s/ Adam B. Wolf

Adam B. Wolf, Esq.

M. Allen Hopper, Esq.

ACLU Foundation

1101 Pacific Ave., Ste. 333

Santa Cruz, CA 95060

E-mail: awolf@aclu.org; ahopper@aclu.org

James M. Haviland, Esq. (SBID #1640)

West Virginia Education Association

1558 Quarrier St.

Charleston, WV 25311

E-mail: Jim.Haviland@nea.org

Andrew J. Katz, Esq. (SBID #6615)

The Katz Working Families' Law Firm, LC

100 Capitol St., Ste. 1106

Charleston, WV 25301

E-mail: ajk792000@yahoo.com

Terri S. Baur, Esq. (SBID #9495)

ACLU of West Virginia Foundation

P.O. Box 3952

Charleston, WV 25339

E-mail: tbaur@acluwv.org

Robert M. Bastress, Esq. (SBID #263)

Post Office Box 1295

Morgantown, WV 26507-1295

E-mail: Robert.Bastress@mail.wvu.edu

Jeffrey G. Blaydes, Esq. (SBID #6473)

Mark W. Carbone, Esq. (SBID #6291)

Carbone & Blaydes, P.L.L.C.

2442 Kanawha Blvd., East

Charleston, WV 25311

E-mail: wbjustice@aol.com

For Plaintiffs